JURISDICTION: **OKLAHOMA TAX COMMISSION - DECISION**
CITE: **2003-08-20-04 / NOT PRECEDENTIAL**
ID: **MV030010**
DATE: **08-20-03**
DISPOSITION: **DISMISSED**
TAX TYPE: **MOTOR VEHICLE REGISTRATION**
APPEAL: **NO APPEAL TAKEN**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That by letter dated January 29, 2003, The Department of Motor Vehicles for the State of California forwarded to the Division an audit following its examination of records supporting Protestant's 2000 apportioned registration application. That the audit resulted in additional fees due the State of California.

2. That by letter dated February 6, 2003, the Division caused to be issued against the Registrant adjustments of IRP registration fees due for 2000 in the net amount of $16,984.38.

3. That the adjustment letter was forwarded to the Registrant at his last-known address in accordance with 68 O.S. Supp. 1993, э 208.

4. That the Registrant did not ask for or receive an extension of time within which to file a written protest to the adjustment.

5. That the Division received a letter from the Registrant on February 24, 2003, stating that the amount for the audit was above his limit; that businesses are slow these days; that the amount set for his company would be hard for him to pay; and, that he would appreciate a reduced audit finding.

6. That a pre-hearing conference was held in this cause on April 29, 2003.

7. That during said conference, the Registrant admitted that the audit is correct and asked that the Tax Commission do him a favor as to the amount of the assessment and allow him time to pay off the amount assessed.

8. That also during said conference, the Division advised of its intention to file a motion to dismiss the protest, at which time the procedures attendant to and the outcome resultant of a dismissal of the protest were discussed.

9. That on May 7, 2003, the Division caused to be filed a ***Motion to Dismiss*** the Registrant's protest to the 2000 registration year audit and assessment.

10. That dismissal of the protest is requested on the grounds and for the reason that Protestant did not dispute or raise any issue against the audit, but merely asked for a "favor" to let him pay out the assessment amount.

11. That a ***Notice to Appear or Respond in Writing***, and show cause why the protest should not be dismissed was mailed to the Registrant at his last-known address.

12. That the Registrant did not respond to the ***Notice*** or appear at the hearing.

13. That the total amount in controversy in this proceeding is $16,984.38.

CONCLUSIONS OF LAW

WHEREFORE, premises considered, the undersigned concludes as a matter of law that the Tax Commission is vested with jurisdiction to consider the ***Motion to Dismiss***, 68 O.S. 2001, ∋ 221(D), Rule 710:1-5-46 of the *Oklahoma Administrative Code* ("*OAC*") and Art. XVI, ∋ 1608 of the International Registration Plan ("*IRP*"); that as a registrant under the provisions of the IRP, the registrant is subject to the audit procedures and policies set forth therein, *IRP*, Appendix F, Art. XVI, incorporated by reference, *OAC*, 710:60-4-20(b)(1); that the audit of a registrant under the IRP may be conducted by its/his base jurisdiction and/or the commissioners of the several member jurisdictions, *IRP*, Art. XVI, ∋∋ 1600 and 1606; that the mileage percentages factor of a registrant may be recalculated as a result of an audit of the registrant's apportioned registration file, *IRP*, Policies and Procedures Manual, ∋ 5030(4), incorporated by reference, *OAC*, 710:60-4-20(b)(3); that an assessment is presumed correct and the taxpayer bears the burden of showing that it is incorrect, and in what respect, OAC, 710:1-5-47, ***Enterprise Management Consultants, Inc. v. Oklahoma Tax Commission***, 768 P.2d 359 (Okla. 1988); that under appropriate circumstances a dismissal of a protest shall be recommended upon taxpayer's failure to appear at a scheduled show cause hearing or to timely respond to the notice thereof, *OAC*, 710:1-5-46(b); that the protest of a taxpayer to a proposed assessment may be denied and the case dismissed where the taxpayer fails to prove a prima facie case or fails to prove facts sufficient to entitle the taxpayer to the relief requested, *Id.*; and that the facts and circumstances of this proceeding present cause for the denial of the protest and the dismissal of the case, specifically Protestant has not asserted nor presented any cognizable factual errors or justiciable issues of law in regard to the proposed action of the Division and Protestant has wholly failed to pursue the protest.

DISPOSITION

THEREFORE, IT IS DETERMINED that the protest of Protestant be denied and the case dismissed. It is further DETERMINED that the total amount in controversy, inclusive of any additional accrued and accruing interest, be fixed as the deficiency due and owing by Protestant.

OKLAHOMA TAX COMMISSION

CAVEAT: This decision was **NOT** deemed precedential by the Commission. This means that the legal conclusions are not generally applicable or are limited in time and/or effect. Non-precedential decisions are not considered binding upon the Commission. Thus, similar issues may be determined on a case-by-case basis.